

Public Policies

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Lakin okays state-sponsored medical malpractice plan, but cites serious shortcomings in current law

*Insurance director to focus on collecting loss information
that also will allow private insurers to set more accurate rates*

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Public Policies serves as a key communications link between MDI and Missouri's legislators, weekly and broadcast media, industry observers and trade associations.

**Comments or questions,
call 573-526-2946.**

Department of Insurance (MDI) Director Scott Lakin has authorized creation of a state-sponsored insurance plan for medical malpractice coverage, but warned that the legislature still must fix serious problems that will limit its ability to help Missouri's physicians.

Lakin issued a formal declaration that medical malpractice is not "reasonably available" for some health-care providers in Missouri – the legal trigger for creating a so-called "joint underwriting association" (JUA) to issue coverage for physicians, other professionals and facilities.

His determination follows Gov. Bob Holden's request that Lakin hold a public hearing July 11 on whether to proceed with the state-sponsored program.

But Lakin said he does not expect the JUA to issue policies until the major renewal cycle in June 2004, which gives the legislature time to adopt a series of statutory changes he recommended last February. The next major renewal period comes in December, which likely is too soon for the plan to operate.

Legislature needs to eliminate requirement for double premium, other flaws in JUA law

Lakin said the state's current JUA law, passed in 1976 but never activated, contained provisions that "make it almost unworkable," including:

- Physicians, and any other health-care providers buying coverage, would have to pay a 100 percent surcharge for coverage their first year as policyholders.
- The JUA can only write coverage for incidents occurring in the policy period, but because of the unique nature of medical malpractice insurance, doctors also need to buy protection for claims filed for earlier incidents.

(See Medical Malpractice, p. 2)



Director Scott Lakin listens to witnesses testify July 11 on whether medical malpractice insurance is "reasonably available" in Missouri and, if not, whether MDI should establish a state-sponsored program to issue that coverage.

Medical Malpractice

(continued from page 1)

- The governing board of the JUA is limited to eight executives of insurance companies with no representation from physicians and other providers.

In a February report to Holden, MDI recommended changes in the law and briefed legislative leaders on those proposals, but the General Assembly failed to hold hearings.

"We were extremely disappointed by the legislative reaction because Missouri has a limited number of doctors, including some who serve critical needs, who may need to rely on this program for coverage for at least a couple of years," Lakin said.

"Particularly the mandatory double premium is a recipe for this program's failure if we intend to help key doctors stay in their practices. Affordability already is the major problem for physicians."

The JUA must charge "actuarially sound" premiums to doctors and other providers, by law. If a deficit results, the law provides for assessing hundreds of casualty insurers, which then could take a credit on their state premium taxes. The state's general revenue fund, where premium taxes are deposited, consequently underwrites any deficit.

JUA to target physicians in specialties, provide safety net if companies withdraw

Lakin said this JUA – like others that exist for auto, homeowners and workers compensation insurance in Missouri – likely will serve only a fraction of the state's licensed doctors, perhaps 1 percent or less of almost 15,000 with licenses.

The JUA is expected to focus on specialties, like some types of surgery, obstetrics or medical directors of nursing facilities, that have few if any market options now.

For more than a year, Missouri has suffered from a severe capacity problem in which too few carriers have been competing to insure new policyholders. From August 2001 to May 2002, Missouri lost 57 percent of its new-business market because two national insurers folded, two more stopped writing such coverage everywhere and the state's largest writer exhausted its financial capacity to write new business.

Missouri's remaining insurers also have become far more selective about the claims histories of doctors they will cover.

The shortage helped trigger price increases for insurers that no longer had serious competition for new business — many of which also had underpriced policies during rate wars of the late 1990s.

Although seven new insurers have received licenses this year, insurers, physicians groups and brokers testified July 11 that some "niche" doctors still face severe problems obtaining any coverage. MDI's own

consulting actuary also said that by early 2003, the state's leading insurers had reduced their malpractice coverage by 11 percent.

Lakin said a functioning JUA would provide a permanent backstop if another insurer would withdraw now or if medical malpractice nationally goes through another cycle of price wars, company insolvencies or withdrawals and rapid premium increases, as it has three times in the past 30 years.

"Missouri would always have a program in place to provide reasonably priced insurance for physicians and other providers when the private market will not do so," Lakin said.

MDI to collect first comprehensive data to improve fairness of malpractice rates

But virtually all the witnesses agreed July 11 that the principal problem for Missouri doctors rests with rapidly increasing prices rather than availability. The law requires JUA rates that are "actuarially sound," so the program could not be used to undercut reasonably priced policies offered by private insurers.

Lakin said he is determined not to undermine the seven new insurers that have gained medical malpractice licenses this year – four of which already are writing new business. When 2003 began, only five companies were taking new applicants in Missouri.

But Lakin said he will give immediate priority to a project that could moderate the price increases that physicians in Missouri have faced since 2001 – the compilation of the state's first pool of data on premiums, settlements and legal costs that medical malpractice insurers must pay.

No database on specific losses paid by Missouri malpractice insurers now covers more than 51 percent of the market, and suspicions remain that Missouri physicians have been subsidizing doctors in states with high losses and without caps on damages. (Missouri, which limits non-economic damages to \$557,000 per "occurrence" of malpractice; it is among half the states with limits on damages.)

"We will be sharing this information with private insurers for their rate-setting purposes to improve confidence in how rates are set," Lakin said.

The JUA itself will use the new loss pool's data for setting reasonable rates that accurately reflect Missouri's legal and medical climate. Those rates will become benchmarks or price ceilings because no private insurer could charge higher rates and still hope to retain or recruit policyholders.



Firms in workers comp 'pool' to benefit from average rate cut

Effective July 1, average workers compensation rates will fall slightly for Missouri employers that buy coverage through the state's "pool" of last resort, Department of Insurance Director Scott Lakin said.

The rate reduction for the pool is expected to average 0.4 percent – in contrast to an average increase of 14.4 percent in the first half of 2003 for the regular workers compensation market.

"We are experiencing a rate spike now in the regular workers compensation market – largely based on the pricing recommendations from an insurance trade group – but the pool's record indicates this overall line of business is relatively stable," Lakin said.

The pool provides coverage for employers that, often because of past claims, cannot find this mandatory coverage in the regular commercial market. In the past four years, average rates for the pool have risen 10.2 percent altogether, or essentially by the rate of inflation (9.3 percent), despite sharply rising medical costs for treatment of injuries.

Current businesses, if they stay in the pool, are expected to save more than \$523,000 from the rate change for policies renewing through June 30, 2004. The number of pool employers is expected to grow to 6,700 this year.

Rate changes vary for employers, worker types based on history of workplace injuries

The 2003-2004 rate change for individual companies, however, will vary because the pool is adjusting rates to better reflect the historical costs of injuries for various kinds of jobs in Missouri. Workers compensation coverage for clerical staff, for example, is less expensive than for construction workers, and pool rates should reflect the same difference in cost found in the regular market.

Overall, about 40 percent of current employers will benefit from rate reductions that can range up to 15 percent. The remainder could face rate increases up to 30 percent.

The types of "pool" enterprises receiving the largest increases – based on the history of losses for their workers – include child care centers, breweries, athletic teams or parks, hair salons, telephone/cable installers and charities.

Travelers subsidiary to administer pool as done since reorganization in 1995

Although Lakin ordered the rate changes, they were proposed by Travelers Commercial Casualty Co., which in late April was re-awarded the contract for administering the pool.

Travelers has held the contract since it was first established in July 1995. At that time, Missouri became the first state to hire a private insurer to manage its pool and shoulder the financial risk, just as in the private sector.

Travelers in 1995 assumed the risk for pool losses – benefit payments and adjustment expenses — up to 115 percent of premium revenues.

Before those cost-saving reforms, a national industry group administered the pool on a cost-plus basis, and all the workers compensation insurers in the state were assessed annually for a prorated share of annual deficits, which then were passed on to other business policyholders.

After the 9/11 disaster, Travelers' reinsurance costs would have risen sharply (reinsurers paid for more than half the World Trade Center losses) if the contract terms remained at 115 percent. So MDI last year issued

(See *workers comp*, p. 7)

MDI levies \$100,000-plus fine in first enforcement of new prompt pay law

The Missouri Department of Insurance in July collected its first fine – more than \$100,000 – under a new law requiring insurers to promptly pay claims to physicians and other providers, Director Scott Lakin said today.

Mercy Health Plans, a Chesterfield-based HMO, this month paid \$100,160 for violations after an examination found that it failed to acknowledge receipt of almost 20 percent of the claims filed by doctors and

others. State law requires such acknowledgement within 10 business days.

"The failure to acknowledge leads doctors to file duplicate claims that double the paperwork, increase the chance for errors and inflate administrative costs, particularly for personnel and other overhead in a doctor's own office," Lakin said. "Patients eventually have to pay more out of pocket or higher insurance

(See *prompt pay*, p. 4)

Prompt Pay

(continued from page 3)

premiums for office visits and other charges to cover the cost of this overhead.

"Doctors also count payment delays by insurers among their chief problems in affording increasing medical malpractice insurance costs."

Lakin, however, commended Mercy for its quick response to the MDI examination: "The HMO paid it own fine promptly, without objection, so we expect Mercy to make its payment methods comply with the law just as expeditiously."

Lakin noted that six-digit fine is among the largest in MDI history. "We expect this fine and others that will follow to provide a major incentive for health insurers, large and small, to make sure doctors, hospitals and other medical professionals are paid promptly," he said.

Fines of similar size are typical in states like Georgia and Texas that have been enforcing prompt-pay statutes.

After years of complaints from physicians and other providers since the advent of managed care in Missouri, the legislature in 2001 updated the state's "prompt pay" standard to include:

- The 10-day acknowledgement and/or request for additional information.
- Payment, denial or request for further information within 15 days following receipt of more information. The insurer may need to make several requests for more data with 15-day extensions each time.
- Payment of interest on claims more than 45 days old, even if an otherwise legal investigation of the claim continues.
- A cap of \$250,000 on MDI's fines for prompt pay violations.

Mercy was among the first MDI compliance examinations completed since the law took effect January 2002. The first phase of compliance work will involve audits of about 30 of the largest insurers and HMOs over 18 months.

The exam covered a sample of almost 1.6 million claims that providers and, in a few cases, patients filed with Mercy from April to September 2002.

In its sample, MDI did not detect other violations that exceeded the 5 percent tolerance level set in the law. However, such problems were found among the 36 claims that were the subject of provider complaints since the law took effect.

Mercy operates the second-largest HMO in Missouri with 173,357 members at the end of 2002. It accounts for one-sixth of all HMO enrollment in the state.

Fines collected by MDI are used to fund state school aid.



Employee of the Quarter - Karen Rimel



*Karen Rimel,
MDI Employee of the Quarter*

This Employee of the Quarter has reached her goal of obtaining her Chartered Property and Casualty Underwriter (CPCU) designation and now she has a new goal – to obtain her Certified Insurance Examiner designation. Karen Rimel has been a workers compensation specialist since June 2000. Rimel has

been with the department since January 1997. She started in consumer services, and then moved to property and casualty, and she is now a workers compensation specialist.

She reviews workers' compensation forms, rate and rule filings for compliance with Missouri law. She also assist consumers with questions about workers' comp requirements and concerns with their annual audits.

Rimel says the best part of her job is working with the consumers. "I have been able to complete my CPCU designation and have been able to use this knowledge in my career and everyday life," says Rimel.

Before starting with the department she worked for an agency in Sedalia for eight years.

Rimel has a 17-month-old granddaughter who she visits in Sedalia on Sundays after visiting her grandmother in Blue Springs. She also works a part-time job and enjoys researching her ancestors. ❖



MDI schedules 'town hall' meetings for tornado victims in Stockton, DeSoto

Department of Insurance (MDI) Director Scott Lakin announced that his staff will conduct "town hall" meetings Aug. 7 in Hillsboro and Aug. 11 in Stockton for Missourians who suffered tornado damage in early May.

The Hillsboro event actually will serve residents of the DeSoto area, where so many public buildings were damaged that no meeting site was available.

"We have reached the stage after a storm when the bulk of victims are receiving settlement offers, which tend to generate most of our consumer complaints," Lakin said.

"Based on past experience, we have learned these gatherings let the consumer staff address common areas of concern and establish formal complaint files where necessary. It also lets insurance company personnel hear community comment on adjusting and settlements, which can help identify problems and improve service."

Linda Bohrer, the MDI consumer affairs division director, will conduct the events, but MDI also is inviting large insurers, state legislators, local elected officials, disaster personnel and Attorney General Jay Nixon's office, which handles the usual increase in complaints about contractors during reconstruction.

MDI has appreciated the assistance of local officials in making most arrangements.

The event schedule includes:

DeSoto Area Town Hall Meeting
Jefferson County Administration Center
729 Maple St.
Hillsboro, MO
Thursday, Aug. 7 from 7 to 8:30 p.m.

.....
Stockton Town Hall Meeting
Cedar County Courthouse
110 South St.
Stockton, MO
Monday, Aug. 11 from 7 to 8:30

Residents of Polk County and other nearby areas that suffered damage also are welcome at the Stockton event. MDI expects to schedule similar forums in other disaster-stricken communities, depending on the response in Jefferson County and Stockton.

Through July 30, MDI had established 117 formal consumer complaints, many of which deal with insurance company handling of claims from homes that were totally destroyed – typically the highest.

MDI consumer staff also had logged 395 inquiries related to the series of tornadoes and less severe hail and wind storms spawned by a super-cell formation stalled over Missouri the week of May 4.

Among common concerns emerging in complaint activity:

- Insurers' insistence that residents rebuild on a different site.
- Insurers' offer to repair the home even though the government disaster personnel consider it a total loss.
- The insurers' attempt to salvage and reuse fixtures from the destroyed home in the new structure.
- The continued inability of policyholders to get any response from the insurer. As a general rule, state law requires insurers to formally acknowledge a claim within 10 days, investigate the claim within 30 days and make an offer within 15 days.

During the early stages of reconstruction, Lakin sent teams of MDI personnel to meet with consumers who had questions in seven communities, including Battlefield, Canton, Gladstone, Mt. Vernon and Jackson.

Based on insurance company projections through the end of May, MDI estimated that the May storms caused damage of up to \$500 million or more in Missouri, making them the second costliest insured natural disaster in state history.

The most expensive disaster – the April 2001 hail storm focused on north St. Louis County – produced industry estimates of up to \$1 billion in insured losses. After that storm, MDI held several town hall meetings in Florissant to answer residents' questions and encourage reasonable settlements.

The St. Louis storm produced 792 formal complaints.

Rather than waiting for the town hall meetings, storm victims can ask questions about the handling of their claims and lodge complaints by calling the MDI Consumer Hotline at 1-800-726-7390 or filling out the complaint/inquiry form on the MDI Web site at www.insurance.mo.gov



Regulatory actions –

June 2003

Legal action - agents, agencies, brokers, companies

Gary M. Bock, Urbandale, IA, \$500 voluntary forfeiture for demonstrating incompetence.

Bankers Life and Casualty Co., Carmel, IN, \$1,000 forfeiture for filing inaccurate statistical data.

Capitol Title Co., Clayton, MO, \$100 forfeiture for 1997 expunge action.

Continental Assurance Co., Chicago, IL, \$1,000 forfeiture for filing inaccurate statistical data.

Cunningham Lindsey Claims Management, Inc., of Tulsa, Tyler, TX, certificate of authority suspended.

Insurance Corp. of New York, Stamford, CT, certificate of authority suspended.

Legion Insurance Co., Philadelphia, PA, certificate of authority revoked.

Phoenix Life Insurance Co., Enfield, CT, \$1,000 forfeiture for filing inaccurate statistical data.

New England Life Insurance Co., Tampa, FL, \$1,000 forfeiture for filing inaccurate statistical data.

Republic Vanguard Life Insurance Co., \$1,000 forfeiture for filing inaccurate statistical data.

Standard Guaranty Insurance Co., Atlanta, GA, \$500 forfeiture for filing inaccurate statistical data.

United Life & Annuity Insurance Co., Des Moines, IA, \$1,000 forfeiture for filing inaccurate statistical data.

Company changes

A G Edwards Life Insurance Co., St. Joseph, MO, changed name to **Community Health Plan Insurance Co.**

American Travelers Assurance Co., West Des Moines, IA, added accident and health authority.

American Travelers Assurance Co., West Des Moines, IA, certificate of authority was suspended.

Colonial Surety Co., Duncannon, PA, was admitted with fidelity and surety authority.

Combined Specialty Insurance Co., Glenview, IL, changed its name to **Virginia Surety Co., Inc.**

Commercial Casualty Insurance Co. of Georgia, Norcross, GA, changed its name to **Commercial Casualty Insurance Co. of North Carolina** and redomesticated from Georgia to North Carolina effective June 13, the company was removed from the eligible list of surplus lines carriers.

Coventry Management Services, Inc., Bethesda, MD, was admitted as a TPA.

Direct Response Insurance Administrative Services, Chanhassen, MN, certificate of authority as a TPA was suspended.

Employee Benefit Claims of Wisconsin, Inc., Seattle, WA, changed its name to **Employee Benefit Consultants, Inc.**

First Dakota Indemnity Co., Sioux Falls, SD, was admitted with property, liability, fidelity, surety and miscellaneous authority.

Gab Robins Risk Management, Parippany, NJ, certificate of authority was suspended.

Greenwich Insurance Co., Schaumburg, IL, redomesticated from California to Delaware.

Ingenium Benefits, Inc., Omaha, NE, was admitted as a third party administrator (TPA).

Mid-America Health, Kansas City, MO changed its name to **Southcare PPO, Inc.**

Platinum Underwriters Reinsurance, Inc., New York, NY, was approved as a qualified reinsurer.

QBE Specialty Insurance Co., Bismarck, ND, was approved as a surplus lines company.

Schmersahl Treloar & Co., P.C., St. Louis, MO, certificate of authority as a TPA was suspended.

Seneca Specialty Insurance Co., New York, NY, was approved as a surplus lines company.

State Line TPA, Inc., Maumee, OH, certificate of authority suspended.

Underwriters Indemnity Co., Peoria, IL, changed its name to **Lexon Insurance Co.**

Willis Administrative Services Corp., Nashville, TN, withdrew as a TPA.

Willis of Kansas, Inc., Wichita, KS, withdrew as a TPA.

Financial exams

Missouri Employers Mutual Insurance Co., Columbia, MO

Market conduct exams

Cameron Insurance Companies

Cameron, MO 64429-1321

\$10,000 forfeiture

Humana Health Care Plans

Columbia, MO

\$114,650 forfeiture



workers comp

(continued from page 2)

an emergency rule and contract change that allowed Travelers to reduce its financial risk to only 100 percent of premium revenues, avoid buying expensive reinsurance and assess other insurers if deficits resulted; none did.

The re-award of the contract contemplates that Travelers again will assume risk for all benefit payments and loss adjustment costs up to 100 percent.

No assessments on insurers in the regular market have occurred during the eight years of the new pool structure. No state funds are involved in any aspect of the pool.

Enrollment drops sharply, then rises slightly; loss ratios stable in Missouri's pool

Today's "hard market" is marked by increasing prices and the inability of many claims-prone policyholders to obtain coverage, which forces them into state pools. But Missouri still is not experiencing serious difficulties in obtaining workers compensation coverage, according to pool population data.

While Missouri's pool size is expected to grow from 5,100 to 6,700 this year, it is much smaller than in 1995 when 12,476 businesses had coverage. The pool's size peaked at about 32,000 employers in 1993, or about 40 percent of the companies then operating in the state.

The size of pool reached its low point in 2000 with 3,526 policyholders, and it has grown as mainly larger businesses with poor claims histories have lost their regular commercial coverage.

Although the pool's enrollment has increased, neither its rates nor loss ratios have risen significantly. Since 1999, average pool rates have increased by a cumulative 10.2 percent.

Rising or falling loss ratios – the percentage of premiums paid out or reserved for claims – tend to trigger rate changes. But ratios for the past four years have been generally stable, registering at about 65 percent: 58.3 percent in 1999; 66.7 percent in 2000; 72.8 percent in 2001; and 65.1 percent in 2002. Loss ratios of about 65 percent typically are associated with profitability for most casualty insurers.



Pool changes since 1995 reorganization

Year	# of policies (employers)	Total premium (in millions)	Average premium change
1995	12,475	\$50.6	+ 0.4%
1996	9,757	\$32.1	+ 5.9%
1997	6,546	\$18.3	+ 9.4%
1998	4,827	\$11.3	(4.5%)
1999	3,785	\$10.9	+ 4.0%
2000	3,526	\$16.5	+ 1.0%
2001	4,118	\$35.0	0.0%
2002	5,100	\$64.0	+ 9.5%
2003 (est.)	6,700	\$68.0	0.4%

MDI to counsel storm victims in Canton Aug. 13

MDI Director Scott Lakin has scheduled individual counseling for tornado victims Aug. 13 in Canton.

Lakin said the local "unmet needs" committee had asked for further assistance as more Lewis Countians received settlement offers from insurers that they consider unsatisfactory.

"Now is a critical decision-making time for homeowners, particularly those who suffered total or near-total losses in early May. Virtually all should have received settlement offers for repair or rebuilding under Missouri's legal deadlines for handling claims," Lakin said.

The counseling is scheduled from noon to 8 p.m. at the Canton Christian Church, 6th and College. To schedule an appointment – which generally will last about 20 minutes – residents with insurance problems should contact committee member Patti Meldrum at 1-800-866-9021.

Lakin said residents can assist by bringing copies of their policies and any correspondence with insurers on the storm to the counseling sessions.

Lakin said the agency is trying to accommodate work schedules by making both afternoon and evening hours available. But he noted that Lewis County residents who cannot meet Aug. 13 should contact the MDI Consumer Hotline, toll free, at 1-800-726-7390, or make an inquiry or

file a complaint electronically at the MDI Internet site. The visit is the third by MDI representatives since the May storm. Earlier, Lakin attended a town-hall meeting in Canton, and MDI consumer services supervisor Mary Kempker answered questions from residents and media during a June visit.

Among common concerns emerging in complaint activity:

- Insurers' insistence that residents rebuild on a different site.

- Insurers' offer to repair the home even though the government disaster personnel consider it a total loss.

- The insurers' attempt to salvage and reuse fixtures from the destroyed home in the new structure.

- The continued inability of policyholders to get any response from the insurer. As a general rule, state law requires insurers to formally acknowledge a claim within 10 days, investigate the claim within 30 days and make an offer within 15 days.



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